



**MINUTES
SCOTTSDALE PLANNING COMMISSION
KIVA – CITY HALL
3939 N. DRINKWATER BOULEVARD
OCTOBER 22, 2003**

PRESENT: David Gulino, Chairman
Steve Steinberg, Vice Chairman
David Barnett, Commissioner
James Heitel, Commissioner
Eric Hess, Commissioner
Tony Nelssen, Commissioner
Jeffery Schwartz, Commissioner

STAFF: Tim Curtis
Randy Grant
Bill Verschuren
Kira Wauwie
Monique De Los Rios-Urban
Al Ward

CALL TO ORDER

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Gulino at 5:15 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

MINUTES APPROVAL

September 24, 2003

APPROVED

COMMISSIONER HEITEL MADE A MOTION TO APPROVE THE SEPTEMBER 24, 2003 MINUTES AS PRESENTED. SECOND BY VICE CHAIRMAN STEINBERG.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

WITHDRAWALS

2-GP-2003 (Cattletrack Ranch) request by Earl Curley & Lagarde PC, applicant, Diann Henderson & AMZ Homes, owners, for a General Plan Amendment from Rural Neighborhoods to Suburban Neighborhoods on a 5.5 +/- acre parcel located at the southwest corner of Cattletrack/Miller Road and Lincoln Drive. **Applicant has requested the withdrawal of case.**

EXPEDITED AGENDA

CHAIRMAN GULINO stated cases 5-ZN-1992#3 and 13-ZN-2003 have been moved from the regular agenda to the expedited agenda. He further stated they would change the agenda order and hear case 14-ZN-2003 after case 12-ZN-2003.

16-UP-2003 (Sugar Daddy's) request by Sugar Daddy's, applicant, Brian Roehrich, owner, for a conditional use permit for Live Entertainment with additional parking on a 1.26 +/- acre parcel located at 7107 E Earll Drive with General Commercial District (C-4) zoning.

18-UP-2003 (Storage Solutions) request by DCS LLC, applicant, Addus, owner, for a conditional use permit for internal storage in an existing building on a 1.2 +/- acre parcel located at 6900 E Thomas Road with Central Business District (C-2) zoning.

CHAIRMAN GULINO stated he did receive a public comment card on this case so they would allow him to speak.

MERLIN GINDLESPERGER, 6918 E. Edgemont Avenue, spoke in opposition to this request. He stated he would respectfully request that the commissioners' review this a little closer. He further stated he is against this request because he felt they would not be doing the neighborhood any good by putting another storage warehouse in their neighborhood. He noted there are already five or six storage warehouses within a half-mile radius. He reported right across the street there is a massage parlor that just a few weeks ago they were caught with prostitution. He further reported two things that he is against is massage parlors and storage warehouses. He expressed his concern regarding what could be stored in these units anything from propane bottles, drugs, firearms, or dead bodies. There may be restrictions but there is no monitoring of what goes into

those warehouses. He concluded he is requesting that the Commission take a closer look at the wisdom of putting a storage warehouse in a neighborhood.

COMMISSIONER HEITEL stated out of consideration of the neighborhood he would recommend they place this request on the regular agenda.

CHAIRMAN GULINO stated the consensus of the Commission was to place this on the regular agenda and it would follow case 14-ZN-2003.

(PULLED TO REGULAR AGENDA)

23-UP-2003 (Mountainside Plaza Fitness Center) request by The Peters Design Group, Inc., applicant, Glenwood Development Company, owner, for a conditional use permit for a health studio on a 3.5 +/- acre parcel located at 10855 N 116th Street (Northeast corner of Shea Blvd & 116th St) with Highway Commercial Planned Community District (C-3 PCD) zoning.

5-ZN-1992#3 (Boulders Villas) request by LVA Urban Design Studio, applicant, Wyndham International, owner, for site plan approval per zoning stipulations from 5-ZN-1992 on a 18.1 +/- acre parcel located at the Northeast corner of Westland Road and Scottsdale Road with Planned Neighborhood Center, Planned Community District, Environmentally Sensitive Lands (PNC, PCD, ESL) and Central Business District, Planned Community District, Environmentally Sensitive Lands (C-2, PCD, ESL) zoning.

13-ZN-2003 (Shea & 74th Street) request by Beus Gilbert PLLC, applicant, Ruby Tuesday Inc, owner, to rezone from Central Business District (C-2) to Highway Commercial (C-3) and approve a development agreement restricting uses on a 2 +/- acre parcel located at 7337 E Shea Boulevard.

COMMISSIONER HEITEL MOVED TO FORWARD CASES 16-UP-2003 AND 23-UP-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL SUBJECT TO IT MEETS THE USE PERMIT CRITERIA. MOVED TO FORWARD 5-ZN-1992#3 AND 13-ZN-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER BARNETT.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

REGULAR AGENDA

12-ZN-2003 (Cattletrack Ranch) request by Earl Curley & Lagarde PC, applicant, Diann Henderson & AMZ Homes, owners, to rezone from Single Family Residential District (R1-43 & R1-35) to Single Family Residential District, Planned Residential District (R1-35 PRD) with amended development standards

on a 5.5 +/- acre parcel located at the Southwest corner of Cattletrack/Miller Road and Lincoln Drive.

MR. CURTIS presented this case as per the project coordination packet. Staff recommends approval of the rezoning to the R1-35/PRD District, subject to the attached stipulations. He requested that the Planning Commission make note of the amended stipulation discussed in study session if they chose to make that part of the motion.

CHAIRMAN GULINO inquired why they were talking about perimeter walls because that is a DR issue. Mr. Curtis replied in the affirmative. The stipulation did indicate the desire for them to pay particular attention to those walls. It is also a character issue so they did want to bring this item up for discussion.

COMMISSIONER NELSEN inquired if Cattletrack is going to be modified in the future. Mr. Curtis replied that it is in its final configuration in terms of road width and design. It is noted in the stipulations if this is approved they want to maintain some sort of gravel or compacted granite walk ways so that it does not have that urban or suburban look. Commissioner Nelsen stated he had a concern that the lots are have a set of CC&Rs prohibiting this sort of development, he requested clarification. Mr. Curtis stated that is referencing the southern lot that is existing is part of the Su Casa subdivision and the applicant will give details how they would be addressing that in the CC&Rs

COMMISSIONER HEITEL inquired how does placing walls along the front of Cattletrack Road, and reducing lot sizes from 35,000 square foot minimums to 25,000-26,000 square foot, and reducing the lot width in amended standards to 100 feet from 135. How is that compatible with this rural enclave in the middle of our city. Mr. Curtis reviewed the impact discussion and what they looked at regarding that.

LYNNE LAGARDE, Earl Curley & Lagarde, 3101 N. Central, Phoenix, AZ, provided an updated on where they are with this project. She reported they are presenting a substantially modified plan that eliminated the need for the General Plan Amendment. She presented information on how the density was calculated. She further reported with the modified plan it is their understanding that the majority of neighbors on Berridge Lane and Su Casa support this plan. They believe this plan maintains the rural character of the area and will set a precedence for the remaining vacant land. This would be a model in fill project.

Ms. Lagarde discussed the work that has been done with the neighborhood. She noted she received an email from Lillian Lefferman who was not able to be here and she wanted to be sure everyone of the Planning Commission received the email. Ms. Lefferman worked a lot with the neighbors, their main concern was the General Plan amendment, and they are very satisfied with the project.

Ms. Lagarde stated regarding the walls she wanted to share what they have is not a perimeter wall they have sidewalls. This is very consistent with the pattern in that area on Cattletrack and Berridge Lane. They believe their walls are consistent with what is occurring in that neighborhood. They agree with staff stipulations that they maintain 30-foot setback and they are agreeable with working with DR to have an appropriate design of those walls. They believe the one-story with a 24 foot height maximum is appropriate, and a maximum of seven lots.

Ms. Lagarde stated they have only requested one modification of the stipulations in Stipulation No. 6 with regard to building height: No building on the site shall exceed twenty four (24) feet in height one-story. There shall be no outside stairs, roof top decks, of patio balconies, on lots 2, 3, and 6. Those are the areas of concern by a neighbor and they are more than willing to put that restriction.

Ms. Lagarde stated for the record they are maintaining the 35-foot setback, which matches the 35-foot setback on lots in Su Casa. With that, they are asking for the Planning Commission's recommendation for approval.

COMMISSIONER SCHWARTZ stated he appreciated all of the efforts they have gone through working with the neighbors. He further stated in relation to the deed restriction are they offering the same deed restrictions they have in Su Casa. Ms. Lagarde stated the deed restriction in Su Case limit the development to one story but there is no height limitation and no restriction on roof top balconies or patios or that sort of thing. The deed restrictions were drafted a long time ago so they do not have a height limitation. With regard to the fact one of the lots is in Su Casa, as you are all aware the city does not enforce deed restrictions, so that really is for them to work out with the neighbors. There are a number of legal ways and they have retained a specialist attorney in CC&Rs so they can be amended without impacting any other lots in Su Casa. If the zoning is approved, they would handle the CC&Rs in an appropriate manner.

COMMISSIONER NELSEN inquired if they had to have 100 percent approval to amend the CC&Rs. Ms. Lagarde replied the CC&Rs dictate it so it is not necessarily 100 percent. She noted she is not sure she would have to pull them out but she thought it was a majority. Commissioner Nelssen stated he would like to know that because if this does move forward they would be putting the residents between a rock and hard place but that is not their job it is the applicants' job to work that out with the surrounding neighbors.

Commissioner Nelssen inquired how the perimeter wall on the western part of the project how does that relate to the back yard of the properties to the west. Ms. Lagarde replied that not all homes have walls on the property line. Some of them do and some of them don't. They will have a perimeter wall and in those

cases where the property owner has a perimeter wall they will work with those neighbors so they are not duplicating walls or creating a no man's land.

COMMISSIONER HEITEL stated while they understand the private deed restriction is not a specific issue before them. Amending those private deed restrictions is an indication of willingness by the parties that are part of that subdivision that they are in agreement with your representation and that you have a majority of these people in support. He further stated that he felt they were putting the cart before the horse. He remarked that he would prefer they came to them with the amendment in place.

He inquired again how does placing walls along the front of Cattletrack Road, and reducing lot sizes from 35,000 square foot minimums to 25,000-26,000 square foot, and reducing the lot width in amended standards to 100 feet from 135. How is that compatible with this rural enclave in the middle of our city.

MS. LAGARDE stated they felt that 25,000-26,000 square foot lots were relatively large lots and they felt the proposal was in character with the neighborhood. She stated with regard to the CC&Rs that is a private matter and the Commission's determination should be based on a land use determination.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

NILS LOFGREN, 7422 E. Berridge Lane, spoke in opposition to this request. He stated that he was speaking on behalf of his wife, son Dylan, and the Myers family who could not be present tonight. He further stated the reason he moved into this neighborhood was because of the rural nature of the neighborhood. He remarked he did not move there to police higher density plan. He concluded that they need to preserve the integrity of the few rural pockets that are left in the city because this little patch is a true gem in the community.

ALLAN BONE, 7512 E. Berridge Lane, stated that although the applicant withdrew the amendment to the General Plan and came back with a revised plan they are still dealing with the same issues of increased density and respect to the rural character. With regard to the focus on the in fill area it is even more reason to respect the rural designation of the area. There are plenty of guidelines that are within the current zoning and allow the applicant to develop those lots with out going to the PRD and the special amendments. They all came to this area for the same reason and it was based on what was placed in the CC&Rs. Going around the CC&Rs to develop one lot is a very special issue to look at because it sets a precedence for increased density. He concluded he would encourage them to vote against this request.

LAURENCE COWEN, 7519 E. Cactus Wren, spoke in favor of this request. He stated he has lived at this address for nine years. He further stated that his first

love is for the natural attractiveness of the desert, and he felt this would be a complete upgrade for the community.

PATRICK GAIMARI, 7442 E. Century Drive in Su Casa, spoke in opposition to this request. He stated he is still against this request for the same reasons he stated at the off site hearing. He expressed his concerns regarding the traffic impact to the neighborhood. He further stated that this is his investment in the community and he moved here for a reason because this area is like a jewel in a very congested community.

JOHN HINK, 6301 N. 75th Street, stated he is the only person other than Diann that abuts this property. He further stated that he felt this was a good solution and recommends support. He commented with regard to the stipulations, he would like them to be clear that it is a maximum of seven lots, one story with a 24 foot height but there is a sloping roof. If there are any perimeter walls, he felt they should be six foot high from existing grade. He further commented he wants it to be clear that this is subject to DRB and subdivision plat approval. He remarked with regard to the CC&Rs. That is a matter between the two parties and is not a matter before the Commission. He further remarked with regard to the curb and gutter stipulation it should be consistent with what is already being done.

MR. GAIMARI stated that he forgot to mention that he and a neighbor went to all of his neighbors in Su Casa and gathered a majority of signatures not to change the CC&Rs.

HARRY JUPIN, 7437 E. Berridge Lane, spoke in opposition to this request. He stated he is opposed to this because he felt the utility services would be impacted and increased by 40 percent and he wanted somebody to look into that. He further stated Cattletrack is an over used cut through street and this will add 40 percent more traffic. He remarked he felt they should not reduce the lot size to 26,000. He further remarked he felt it was inappropriate to make a zoning change and then use the zoning change to muscle to get a CC&R change. He concluded he felt they should table this until they CC&Rs are taken care of and then goes ahead with the zoning.

CHAIRMAN GULINO stated they have six cards from people not wishing to speak in favor of the request and three opposed to the request.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

MS. LAGARDE stated most of the comments they have heard are related to density and the rural character. She reminded them that what this PRD gives them is an extra lot but beyond that what it enables them to do is avoid fronting homes on the highly traveled Cattletrack and Lincoln. They believe this is a far

more appropriate solution for the neighborhood where they have just two driveways and homes with shared private driveways. She remarked they felt this plan is compatible with the rural nature of the neighborhood. She further remarked the issue regarding the CC&Rs is a private matter and not an issue for the city to take a position.

COMMISSIONER NELSEN stated his concern is that if they do approve the zoning change for this property and they cannot get the changes to the CC&Rs then they made a zoning change to the property that would not reflect this plan. Ms. Lagarde replied the only part of the property that is affected is the southern part and the rest of the property is not affected. If they cannot change the CC&Rs, they would have to make an adjustment. It does not mean they cannot implement the plan. They understand they would have to deal with that issue if they cannot amend the CC&Rs. Commissioner Nelsen inquired if the plan could be adjusted and go forward with six lots. Ms. Lagarde replied in the negative.

COMMISSIONER SCHWARTZ commented from what he is hearing there seems to be a no mans land of time between the time if they receive an approval for the project and when the CC&Rs may be changed. He inquired about the timeline to get the CC&Rs modified. He inquired if they could put some sort of timing stipulation to ensure that occurs in a timely manner. Ms. Lagarde stated if the case is approved the amendment language has been drafted and they intend to work in tandem with the plat application to DRB. If the Commission wanted they could put in a timing stipulation but that might go against the city policy of not getting involved with deed restrictions.

Commissioner Schwartz stated he knew that it is an increase in density but it was not significant they are just adding two lots. He further stated that they could have 10 access points because each lot could have a circular driveway off Cattletrack and they are diminishing that by having only two points of ingress, egress. He remarked the rural character is very important and vital but he thought they have a very strong Design Review Board and they would take a strong look at all of the comments and ideas about how to keep the rural character in the neighborhood in tact. He commented he hopes that all of the neighbors will attend the DRB meeting and give their thoughts. He concluded he was in favor of this project.

COMMISSIONER HEITEL stated his biggest concern with this project is that they would be setting the standard for other in fill projects. To allow the next person who wants to come in, do an acquisition of a number of lots in this area, do a another PRD, and reduce the lot sizes potentially even further in this very unique area. He further stated that he had a tremendous amount of difficulty being a party to encouraging that. He remarked the whole issue of as the city continues grow and they will be faced with in fill issues strikes at the issue of neighbors

trying to protect their neighborhood. They have a unique character area here and reducing the lot sizes, creating walls along the areas, and not creating front facing lots is of immense concern. He concluded he would not be able to support this request.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 12-ZN-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR DENIAL.

COMMISSIONER HESS stated that he felt Commissioner Heitel has very articulately stated the issue here that you have to deal with what the future is about. He further stated that he thought to rush to judgment to add one lot and set precedence would be ill advised. He concluded that he is opposed to this request.

VICE CHAIRMAN STEINBERG stated he would agree that it does set precedence. He commended the applicant for working very hard and has come up with something that is almost palatable. The big thing that bothers him that it affects the land to the east and the whole rural oasis look would disappear overnight. He further commented that he is concerned about the neighbors and their desires. He noted that a 40 percent density increase is a big increase although it is only two lots. He further noted what is upsetting is trying to decide a case that can't stand on its own because of the CC&Rs issue. He remarked that he felt ill equipped to move forward. He concluded what he has heard loud and clear is that this is a beautiful enclave that needs to be preserved.

COMMISSIONER BARNETT stated he thought the common problem they have in going forward is the question of trying to maintain what they have or try to come up with something better or different. There are plenty of neighborhoods like this that were designed 20, 30, 40 years ago that the design of the neighborhood had nothing to do with the design of the neighborhoods surrounding it these days. These lots could all have u-shaped driveways and they could create all kinds of chaos here. When he was looking at the proposal this seems to be a very organized proposal it seems to keep density at a reasonable level. He remarked he did not think they were increasing the density significantly. With regard to the walls, there would be a representative from this Commission on DR Board and significant input from the citizens. He further remarked that he liked the development that is proposed it is a modern version of the neighborhood. He concluded he does appreciate all of the comments about this being a rural enclave but he is in favor of the project in front of them.

COMMISSIONER NELSEN stated looking at the site plan he felt that there were some long overdue ideas being used such as shared driveways minimizing the ingress and egress on Cattletrack. He further stated he felt the issue regarding the walls could be worked out but unlike his colleagues' he did not have as much faith in the DR Board. He remarked that he is concerned about

the CC&Rs issue and would support a continuance with a little more assurance that those changes to the CC&Rs can be accomplished. He concluded as it stood tonight he could not support this request.

COMMISSIONER BARNETT stated assuming they pass this is there any way to have a better feel for this before it goes to the City Council. Ms. Lagarde stated they could certainly attempt to accomplish that but could not commit. She reiterated the fact that issue should not impact their decision tonight.

COMMISSIONER SCHWARTZ asked legal counsel for advise regarding the CC&Rs issue. Ms. Boomsma stated the CC&Rs are a private agreement between the landowners and the city has no authority to enforce them and in general stays out of the issue altogether. She further stated she would recommend that they make their decision based on the land use decision presented. If they fail to change the CC&Rs they would have to return.

CHAIRMAN GULINO stated that he lives on the other side of the canal and travel Cattletrack. He further stated that he was initially opposed to the plan up until the time he saw the site plan. He remarked when he looks at the site plan he felt that it maintains the character of the neighborhood and for that reason he would have a hard time objecting. He further remarked that he had a lot of faith in the DR Board. He commented what they are really discussing here is the addition of one or two lots and in his opinion that does not constitute any impact on infrastructure. He further commented he does like how the driveways have been combined into easements. He added he felt that particular portion of this neighborhood seems to be suffering some neglect so he would like to see the improvement. The in fill redevelopment is important for this portion of Scottsdale. He concluded he does support this case.

Chairman Gulino inquired if there was a second for the motion to deny this case.

COMMISSIONER HESS SECONDED THE MOTION.

THE MOTION PASSED BY A VOTE OF FOUR (4) TO THREE (3) WITH CHAIRMAN GULINO, COMMISSIONER BARNETT, AND COMMISSIONER SCHWARTZ DISSENTING.

14-ZN-2003 (Northsight Retail Pads) request by Earl, Curley & Lagarde, applicant, MATC Inc, owner, to rezone from Central Business District (C-2) to Highway Commercial (C-3) on 1 parcel with a total of 1.2 +/- acres located 8796 E Raintree Drive.

MR. VERSCHUREN presented this case as per the project coordination packet. Staff recommends denial for the lack of a regional use purpose of this request.

LYNNE LAGARDE, Earl Curley & Lagarde, 3101 N. Central, Phoenix, AZ, stated the requested rezoning would continue to allow potential restaurant users with drive-through facilities to be located on Pads 1-4 along the southbound freeway frontage road with the 124-acre Northsight Retail core. She reviewed where the other fast food drive-through restaurants are located in this area. The use they are requesting is consistent with the regional overlay. She remarked they have a difficult time understanding staff's position.

COMMISSIONER NELSEN inquired how staff arrived at their recommendation. Mr. Verschuren stated they felt the rezoning necessary for this parcel did not meet the full intent of the Regional Use Overlay Designation. He noted there is an area by the bank that has not been developed and is in the process of being developed with small in line uses. He further stated they have worked very hard on the small in line uses to have a pedestrian connection going through there so someone could park and meander through all the shops with good connections. There are also larger retail boxes but they made sure there are connections.

Commissioner Nelsen inquired if the major issue was the drive-through. Mr. Grant replied in the affirmative noting a sit down restaurant would be allowed. He provided further information regarding the reasoning behind their decision for denial and provided information on the anomaly in the zoning ordinance.

VICE CHAIRMAN STEINBERG stated that he did not see this area where you would meander outside of your vehicle. This is a vehicle type development. He further stated because of the fact that there is some inconsistency in the zoning he did not think the applicant should have to pay for such an anomaly. He commented that there are many drive throughs in this area that if you were just a normal person shopping you would not be able to distinguish between the C-2 and the C-3 it all looks about the same. He concluded he did not see why they would unfairly hurt an applicant who is trying to do something consistent.

VICE CHAIRMAN STEINBERG MOVED TO FORWARD CASE 14-ZN-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER SCHWARTZ.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

18-UP-2003 (Storage Solutions) request by DCS LLC, applicant, Addus, owner, for a conditional use permit for internal storage in an existing building on a 1.2 +/- acre parcel located at 6900 E Thomas Road with Central Business District (C-2) zoning.

(COMMISSIONER SCHWARTZ DECLARED A CONFLICT AND DID NOT PARTICIPATE IN THE DISCUSSION OR THE VOTE.)

MR. VERSCHUREN presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

COMMISSIONER HEITEL stated with regard to traffic the previous use was retail and more daytime oriented and probably fit better into the neighborhood. He further stated he did not see in the stipulations any assurances that the traffic would be limited to certain hours so that they don't have people loading and unloading in the middle of the night.

PAUL MASSE, DCS, 1204 N. Cave Creek, Phoenix, AZ., stated the storage facility would be open from 7:00 a.m. to 8:00 p.m.

COMMISSIONER HEITEL inquired if the loading and unloading would occur on the backside of the facility. Mr. Masse replied it would occur on the east side of the building.

Commissioner Heitel inquired if the applicant would be willing to modify the hours of operation. Ms. Masse stated they would be willing to work on appropriate hours.

VICE CHAIRMAN STEINBERG inquired if there would be any outside storage of recreational vehicles. Mr. Masse replied in the negative.

CHAIRMAN GULINO inquired if there would be any on-site living accommodations for the manager. Mr. Masse replied in the negative.

COMMISSIONER NELSEN stated the resident who spoke earlier expressed his concern that there would be no way to monitor the types of things that would be stored and there would be the possibility for storing such things as hazardous materials or dead bodies. He inquired how would they enforce the regulation to ensure only proper items are stored at this facility. Mr. Masse stated there would be supervision at this facility and a manager would be on duty during operational hours.

CHAIRMAN GULINO inquired if they would be using the garage underneath the building. Mr. Masse replied it would not be used.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 18-UP-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL SUBJECT TO IT MEETS THE USE PERMIT CRITERIA AND WITH THE ADDED STIPULATION:

THE HOURS OF OPERATION RESTRICTED TO 7:00 A.M. TO 7:00 P.M.

SECOND BY COMMISSIONER BARNETT.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0) WITH COMMISSIONER SCHWARTZ ABSTAINING.

16-ZN-2003 (Sherwood Heights Overlay) request by Tom & Billie Young, applicant, to add an overlay zone district (R1- 10 PRD) to restrict the residential building height and reduce the allowable number of stories on approximately 140 acres located (From) the north side of Edgemont Avenue, south to Oak Street from 56th Street to 60 Street with currently Single Family Residential District (R1-10) zoning.

MR. GRANT presented this case as per the project coordination packet. Results of the citizen petition reflect 86.3% support for the application of a PRD Overlay. It is evident that this neighborhood has reached substantial consensus on the proposed amended standards. Staff recommends to support the choices made by the majority of the residents.

COMMISSIONER HEITEL stated this is not something new for this neighborhood but rather this is an attempt by the neighborhood to reaffirm the conditions that were imposed when the subdivisions were developed that expired not too long ago. Mr. Grant stated the CC&Rs expired in 1992.

VICE CHAIRMAN STEINBERG inquired whether legal counsel had reviewed the letter from Mr. Irvine that states this is an illegal action and would result in spot zoning and minimization of land rights. Ms. Boomsma stated she had reviewed Mr. Irvine's letter. She further stated the City Attorney's office disagrees with most of the things in the letter as far as legal issues are concerned.

COMMISSIONER SCHWARTZ inquired if anybody present had a copy of Sherwood Estates CC&Rs because he would be curious to see what they had to say about height restrictions.

CHAIRMAN GULINO asked legal counsel to advise the Commission regarding proceeding. Ms. Boomsma stated this application was brought forward by the neighborhood and not by anyone on city staff and when an application is filed with the city, they process it. She further stated the Commission should consider it from a land use perspective and make whatever recommendation seems appropriate. She reviewed their options.

Chairman Gulino requested clarification regarding someone filing a rezoning application on property that they don't own. He further stated hypothetically, if he had one of four lots and three neighbors decide they want to put a zoning restriction and they include my lot in that application and I represent 25% and they can file this without my concurrence and authorization is that legal. Ms. Boomsma stated there is only one thing that the 75% rule will do and that is to

initiate an application. The application has no power to impose restrictions only CC&Rs can impose restrictions. The City will consider the application if they show a super majority of the people in the area are interested and it is then up to the City Council whether to impose restrictions.

COMMISSIONER HEITEL referenced A.R.S. 9462.01(D), which authorizes overlay districts. He stated this process has been enabled by the State legislature revised statutes authorizing the City to do this. The city has done overlay districts in the past so they are not doing something different. He commented that ESLO and the Foothills overlay was done in a similar manner. Ms. Boomsma stated in her opinion the City Council has authority to adopt overlay zoning. She further stated that she was not sure that she entirely understood Mr. Irvine's position but she believed that he was here to explain his position.

Commissioner Heitel stated from a planning perspective, once we have gotten over the legal issue, for many years the City of Scottsdale has endorsed character areas, overlay districts, neighborhood issues and have encouraged neighbors to preserve the character and in some cases go about identifying special characteristic in the neighborhood. The mandate from many years ago is starting to evolve now. Mr. Grant stated philosophically he is correct but they have not been faced with achieving it in this exact way. They have been looking for neighborhoods to create and identify what is valuable to them and important to them.

CHAIRMAN GULINO stated the issue before them seems to be straightforward. It seems a majority in this neighborhood wants a 16-foot height limitation to preserve their views.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

A LEROY ANDERSON, 5801 E. Vernon Avenue, spoke in favor of this request. He stated he has lived at this residence for 40 years and they want to preserve the character of the neighborhood. They want a height restriction to keep two story houses out of their neighborhood. He remarked with due respect to Commissioner Schwartz he was opposed to his suggestion of creating new CC&Rs. He concluded he felt the Commission should vote in favor of this request.

CAROL DERRYBERRY, 5818 E. Oak Street, spoke in support of this request. She stated they have been at this residence for 17 years. She further stated she felt by passing this request tonight they would be honoring the Developer of this area for having insight and respect for the location. She noted that everyone has the same view. She further noted that she felt this is a unique location and they

enjoy their views. She reported they would like their support in preserving the spectacular views.

ELAINE RILEY, 5802 E. Wilshire, spoke in favor of this request. She stated this is a true example of democracy in action. She further stated 86 % of the neighborhood is in favor so she felt they should note that the majority has spoken.

LINDA PETERSON, 5639 E. Windsor Avenue, stated she is a new homeowner in Fairway Park. She further stated that she was attracted to the neighborhood for many of the reasons they want to preserve the views and the desert character. She noted when she moved in she was thrilled by her view of the camel head but within a week of moving in construction commences on a remodel across the street on the north and this project is probably 15 feet 11 inches and although it is not a two-story it has completely obscured their views. She remarked that she felt this proposal did not address all of the issues and there should be more details.

WILLIAM HEYWOOD, 5653 E. Wilshire, stated he is in the process of remodeling. He remarked he bought in this neighborhood because of the views and the atmosphere. He further remarked he is not in opposition to the overlay he just felt that 16 feet is too restrictive. He reported he teaches architecture and he is designing a house that is over 16 feet but would not block the views. He further reported one height restriction without taking into account the topography of the land and how different lots have different levels is too restrictive.

TERRY SEWELL, 2805 N. 58th Street, spoke in opposition to the request. He stated he felt the ruling would be too rigid and harms the neighborhood in the big picture. He further stated his house is 16 feet and it is two stories. He commented he felt there could be creative architectural solutions. There are better and more creative solutions.

THOMAS IRVINE, 1419 N. 3rd Street No. 100, stated he represents eight homeowners in Sherwood Heights. He further stated they would disagree that the neighborhood applied for the PRD. They didn't. They were looking for some help from staff and staff pushed them into this hole that does not fit. The neighborhood did not ask for this situation. It is not the fault of the neighborhood that this vehicle being selected does not fit under State law. He referred to Attachment 7 shows that the neighborhood study done by staff defines the neighborhood as including Heritage East. So, when they talk about percentages the neighborhood study has excluded one third of the neighborhood. He stated when the Foothills Overlay and ESLO was done the neighborhood was defined and the vehicle was selected properly and legally and was applied to the neighborhood and that is not what is before you tonight.

Mr. Irvine stated with regard to the 16-height restriction that does not apply to the house it applies to the slab. This does not address the contours of the land. He discussed why he felt that the statutes that enable this process are inappropriate.

Mr. Irvine stated if this were approved it would clearly be illegal spot zoning. He further stated this request does not solve the problem. It does not deal with vegetation or the contours of the terrain.

Mr. Irvine stated a comprehensive study was conducted before ESLO and the Foothills Overlay was approved. They need a comprehensive study before they can move forward. South Scottsdale deserves what north Scottsdale got, which is a comprehensive study.

COMMISSIONER NELSEN stated he spent 20 years working on the Foothills overlay and he did not wish that on South Scottsdale. He inquired why Mr. Irvine is stating this is not the neighborhood. Mr. Irvine stated it is not the neighborhood because the process Mr. Grant described for this entire area one-third of that area has been excised and just two thirds of the area are before you tonight. He further stated he did not know why that was done.

COMMISSIONER HEITEL asked if it was a bit disingenuous for Mr. Irvine to suggest that the statutes that enable this overlay process are inappropriate here because it does not fit into the neighborhood that you have chosen to characterize as a neighborhood. He stated the statute as he reads it does not provide any limits based on the size of the overlay district. No where does he read that if you adopt a overlay district it would have to be applied everywhere. It would be an overlay district in a special area that is not defined by the legislature. It seems incorrect to leave with that impression. Mr. Irvine stated the overlay statute was adopted in 1991 after the Court had said there was no authority for overlays so when the legislature adopted the overlay it clearly says in our view that it is multi-zoned area and you can't just apply it to one district. Commissioner Heitel stated that encourages him that the Foothills Overlay applies to all of Scottsdale. Mr. Irvine replied it would not. The Foothills Overlay is for a multi-zoning district. Overlay districts don't apply to the entire city.

JANET SELL, 5723 E. Cambridge Avenue, spoke in support of this case. She stated with regard to Mr. Irvine's definition of a neighborhood it is important to note that the Heritage East subdivision in terms of neighborhood character is quite different for the other subdivision. The lots are much smaller. She provided history on how they got here tonight. They started this process because the winds of change were going through their neighborhood and because this is community has such extremely unique character and unique views they wanted to preserve it. She provided information on the CC&R's that expired in 1992 noting that there was a 16-foot height restriction. She showed a

picture of how the views would be blocked if houses were built higher up to 20 feet.

COMMISSIONER SCHWARTZ stated the picture Ms. Sell presented is a great example of the worst case scenario of what could happen. The best case scenario would be a set of CC&Rs with building envelope for certain height restriction areas that would show you could create pockets of elevations without taking away peoples property rights. Ms. Sell stated she felt that CC&Rs are not a legally viable option at this point of development in community.

VICE CHAIRMAN STEINBERG inquired if their community was made up of several homeowners association. Ms. Sell stated replied in the negative. Vice Chairman Steinberg inquired if they had thought about having an architectural review that would look at each of these on a case by case basis. Ms. Sell stated an architectural review would normally be part of a homeowners association and they do not want an HOA. Vice Chairman Steinberg inquired if she had bought here knowing somebody could build a two-story home. Ms. Sell replied she knew but most people in the neighborhood were unaware the height restriction had expired.

COMMISSIONER NELSEN stated it would seem because of the independent nature of this community the only issue you could come to an 86 % consensus about was the height restriction. Ms. Sell replied when you talk about any other issue in the neighborhood there is more controversy but there are other things they came to a consensus on.

MS. SELL reported that they studied the issue of where to measure the height from and the determined after studying the options the best place would be to measure it from the slab.

CHAIRMAN GULINO inquired if they had the ability to depart from how the city normally measures height and state how the height should be measured. Ms. Boomsma replied they could because that is how it is outlined in the application.

COMMISSIONER SCHWARTZ inquired if he were a developer going into a community to develop a project and he was making an application for a R1-10 PRD or R1-35 PRD private streets public streets would he be required to submit what the proposed CC&Rs are for this development. Would he be required to have CC&Rs for that development? Mr. Grant replied he did not believe so unless there was some requirement for the fulfillment of a stipulation. They would not require CC&Rs exist if the development standards that they were going to implement did not require some sort of oversight.

KATHY BALDWIN, 5426 E. Lewis, spoke in support of this case. She stated she would really like them to understand just how wonderful this neighborhood is

and the efforts that have go on to preserve the character. She further stated the 13.7% are not necessarily all opposed that also includes the people they could not reach.

JOHN STUCKEY, 5602 E. Lewis Avenue, spoke in support of this case. He stated that he and his wife bought their house in this neighborhood specifically because of the character. They love the character of the neighborhood and it would never cross their minds to have taller house springing up. He noted he does not know why people are so anxious to turn old ranch homes into modern castles.

BILLIE YOUNG, 2401 N. 57th Street, spoke in support of this case. She stated she has lived in this neighborhood for 23 years with her husband and they have enjoyed it. They bought their house because they loved the mountain views. She further stated if they are allow to built two story homes that would create a privacy issue because people would be able to see into their yard.

BILL REIFF, 5809 E. Lewis, spoke in support of this case. He stated he has lived here for almost eight years and they bought their home knowing that they were going to remodel. They would never have dreamed of drawing plans that would impact their neighbors' views. He showed a picture of their finished remodel to show a nice remodel can be done within the 16-foot height restriction.

JIM AMEDURI, 5654 E. Wilshire Drive, spoke in favor of this case. He stated he and his family have lived in this area for 14 years. He further stated that when this process began they hired an attorney to advise them what issues could be brought up to derail their plans and they were advised the issue of spot zoning would be brought up. He reported they have dealt with the legal issues with their outside counsel and talked to staff and they have concluded this is a viable request. He remarked he asked the people who were against this request to explain what their issue was. It was not that they wanted to build a two-story home but their perception was that down the road it could affect the resale of their home. He noted that they felt the height should be measured from the existing slab in order to ensure privacy in their neighborhood.

CHAIRMAN GULINO stated there were 21 people in support of the case who did not wish to speak and 7 against.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

COMMISSIONER BARNETT stated he did not think the zoning height restriction solves the problem. They are coming in here primarily asking for view sheds and anything that restricts the height does not take care of trees, bushes, telephone poles, fire places, antennas, somebody putting a big piece of artwork in the front

yard. He further stated there are plenty of things that could be above 16 feet so he did not know if this was the process to solve their concerns.

He stated this is bad public policy from a PRD standpoint. If you have read the PRD it speaks toward new development. It talks about traffic flow. It talks about innovative site plans, theme parks, and community amenities. It is primarily a density shift plan that allows people to move properties around in a larger area to create public space and public areas. The PRD issue itself contemplates CC&Rs and the CC&R covenants are more restrictive than the PRD.

He remarked that he was surprised that somebody wants more government regulation. There is obviously consensus and a lot of people want something done. It seems like even though they have had testimony that CC&Rs are not the way they want to go, they should come up with some sort of neighborhood organization or some type of consensus that is not revolving around how the government is going to restrict your property.

He stated in the written testimony there were comments about architectural styles and ways you cannot build on your property. He further stated that even though most of the conversations were about views and heights there is still some other issues that are simmering about how you can develop your property that can be designed through another type of government program. Either thought a neighborhood design reviews or using some established design reviews board that the government set up.

He remarked his conclusion is that there are other ways to do this. As they go forward that they should not use the PRD model and see if they can come up with an alternative, not necessarily an HOA but CC&Rs would work better for what they are looking for.

COMMISSIONER SCHWARTZ stated that he wanted everyone to understand that he understands what they are trying to accomplish. The question in his mind is the vehicle they are using to get there. He further stated he would applaud them for all coming together as group and trying to come up with a solution that helps their neighborhood. He remarked he believed that a set of covenants would guide them in the right direction rather than having public policy setting a precedence on height restrictions and PRDs in an older established neighborhood.

COMMISSIONER NELSEN stated he would support this request for the overlay not because it is the best avenue to take but because it is the one you have chosen. He remarked they would have architectural challenges with the 16-foot height restriction. He further remarked the City Charter prohibits any type of residential architectural review other than house color, height those sort of things. It does offer some interesting alternatives to building and still respect the

character of your neighborhood. He concluded he would applaud their efforts for reaching a 86% consensus.

VICE CHAIRMAN STEINBERG commended them for all coming together and 86.3 % is an overwhelming majority. He stated he wants to do what is right and what is right is what the community wants. He remarked he would support this case. He further remarked he felt it boils down to privacy and height. He added if he were put in that position he would also be fighting the same fight.

COMMISSIONER HEITEL commended them for what they have done and accomplished. He reiterated that for many years the City of Scottsdale has endorsed character areas, overlay districts, neighborhood issues and have encouraged neighbors to preserving and in some cases go about identifying special characteristic in the neighborhood. It is clear that this is a special area in our city and should be preserved.

COMMISSIONER HESS commended them for coming together. He stated it would be impossible in his mind not to support you enthusiastically.

CHAIRMAN GULINO stated he wished that he did not have to make this decision because it is not his neighborhood and he would prefer this issue was solved with the folks that live in the neighborhood. He further stated they are being put into a position to make a decision that he felt they have no business making. He remarked his concerns are regarding the people who do not want this because he felt this restriction was a taking. He commented he would not be able to support this request. He further commented his preference would be to continue this request in hopes that they could work something out among themselves.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 16-ZN-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER HESS.

THE MOTION PASSED BY A VOTE OF FOUR (4) TO THREE (3) WITH CHAIRMAN GULINO, COMMISSIONER BARNETT, AND COMMISSIONER SCHWARTZ DISSENTING.

11-TA-2000#3 (Text Amendment/ESLO II) request by City of Scottsdale, applicant, for a Text Amendment to amend Ordinance 455 (Zoning Ordinance) Article VI. Supplementary Districts., Section 6.1010. Environmentally Sensitive Lands Ordinance (ESLO).; Section 6.1011. Purpose.; Section 6.1050. Intensity of Development.; Section 6.1060. Open Space Requirements.; Section 6.1070. Design Standards.; Section 6.1071. Design Guidelines.; Section 6.1083. Amended Development Standards.; Section 6.1090. ESL Submittal Requirements.; Section 6.1091. All Applications. This covers approximately 134

square miles of upper desert and mountain areas of Scottsdale and is located north and east of the Central Arizona Project (CAP) Canal.

MR. WARD presented this case as per the project coordination packet. Staff recommends approval, subject to the attached ESLO Text Amendment.

COMMISSIONER NELSEN expressed his concerns regarding the height restrictions and the ability to go to the DR Board for an exception. He stated he would like to see the maximum building height for all single family residential be at 24 feet.

COMMISSIONER SCHWARTZ inquired how does this amendment deal with the flow of storm water in the current master plans. Mr. Erickson stated he did not think it would have a great affect one way or the other. Commissioner Schwartz also inquired if they have had a chance to discuss this with some of the developers to see how it would affect their development plans. Mr. Grant stated J.T. Elbracht participated in the stakeholders group so everyone should be on the same page.

COMMISSIONER NELSEN stated on Page 6, Section 6.106000. Open Space requirement No. 1 he felt they should insert the working "for the health safety and welfare of the public and it should read as follows: "In order to preserve sensitive environment conditions, retain and protect meaningful desert open space, maintain visual amenities, and mitigate hazards for the health safety and welfare of the public a percentage...."

COMMISSIONER HEITEL stated that he did not have much comfort that the flood plain regulations and the ELSO will come together. He further stated he could go on all night with examples of major developments going in major washes. Mr. Erickson stated the City Code states in ESL the a wash having a capacity of 50 CFS or greater must be dedicated to the city. Commissioner Heitel inquired why that is not happening. Mr. Erickson stated there is an appeals process through Council that would allow for something different to be done. Commissioner Heitel expressed his concerns that decisions are being made on strictly mathematical calculations.

MR. GRANT suggested staff looks at the Commission's concern and bring this back at the next meeting.

COMMISSIONER SCHWARTZ MOVED TO CONTINUE CASE 11-TA-2000#3 UNTIL THE NEXT PLANNING COMMISSION HEARING.

COMMISSIONER SCHWARTZ suggested having this issue at the top of the agenda.

COMMISSIONER NELSEN inquired if they could come to a decision on the two items he brought up.

COMMISSIONER HEITEL SECONDED THE MOTION.

**THE MOTION PASSED BY A VOTE OF SIX (6) TO ONE (1) WITH
COMMISSIONER NELSEN DISSENTING.**

WRITTEN COMMUNICATION

There was no written communication.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission was adjourned at 9:30 p.m.

Respectfully Submitted,

"For the Record " Court Reporters